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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,950	07/30/2003	Ronald C. Elliot	ECC-02100	1764
28960	7590	11/30/2005	EXAMINER	
HAVERSTOCK & OWENS LLP 162 NORTH WOLFE ROAD SUNNYVALE, CA 94086			GEHMAN, BRYON P	
			ART UNIT	PAPER NUMBER
			3728	
DATE MAILED: 11/30/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/631,950

Applicant(s)

ELLIOT, RONALD C.

Examiner

Bryon P. Gehman

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38, 40-43 and 45-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-36 is/are allowed.
- 6) ☒ Claim(s) 1-14, 37, 38, 40-43 and 45-55 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12, 37, 40-43, 45-49 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webster (1,157,475) in view of Ban (4,533,044). Webster discloses a paint storage apparatus comprising a container or cup divided into a plurality of compartments (5 and 6) and including painting implements disclosed as supported in the compartments. Ban discloses a paint storage apparatus with a lid (19) having a plurality of orifices (22) providing paint implement support and groove means (rim 20). To modify the paint storage apparatus of Webster employing a lid having a plurality of orifices aligned over each compartment would have been obvious in order to allow individual paint implement support, as suggested by Ban.

As to claims 2-5, 7-11 and 40-43, each reference discloses a cylindrical shape and a circular shape in cross section. The exact shape of the apparatus would have been a matter of design choice, the shape of the apparatus not providing any new and unexpected result.

As to claim 9, to employ a conventional bucket shape for the paint storage apparatus would appear to have been obvious to one of ordinary skill in the art and fail to distinguish any new and unexpected result.

As to claims 45-48, the container of Ban is uniformly formed of a homogeneous material (solvent resistant plastic). The exact polymer resin (polypropylene) chosen would appear to be a matter of design choice.

As to claim 49, the tops of the orifices of Ban are shown as tapered to engage the painting implements.

3. Claims 1-12, 37, 40-43, 45-49 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webster (1,157,475) in view of Adams (6,041,919). Webster discloses a paint storage apparatus comprising a container or cup divided into a plurality of compartments (5 and 6) and including painting implements disclosed as supported in the compartments. Adams discloses a paint storage apparatus with a lid (70) having a plurality of orifices (16-20 or 78, 88) providing paint implement support and groove means (rim 72). To modify the paint storage apparatus of Webster employing a lid having a plurality of orifices aligned over each compartment would have been obvious in order to allow individual paint implement support, as suggested by Ban.

As to claims 2-5, 7-11 and 40-43, each reference discloses a cylindrical shape and a circular shape in cross section. The exact shape of the apparatus would have been a matter of design choice, the shape of the apparatus not providing any new and unexpected result.

As to claim 9, to employ a conventional bucket shape for the paint storage apparatus would appear to have been obvious to one of ordinary skill in the art and fail to distinguish any new and unexpected result.

As to claims 45-48, to provide a paint container from plastic would not appear to be inventive, as official notice is taken that, evidenced by the cited prior art, plastic paint containers were well known. The exact polymer resin (polypropylene) chosen would appear to be a matter of design choice.

As to claim 49, the orifices of Adams are tapered when engaging the painting implements.

4. Claims 1-5, 37, 40-43, 45-49 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crilly (5,746,346) in view of Ban (4,533,044). Crilly discloses a paint storage apparatus comprising a container or cup divided into a plurality of compartments (10, 11 and 13; respectively) and including painting implements disclosed as supported in the compartments. Ban discloses a paint storage apparatus with a lid (19) having a plurality of orifices (22) providing paint implement support and groove means (rim 20). To modify the paint storage apparatus of Crilly employing a lid having a plurality of orifices aligned over each compartment would have been obvious in order to allow individual paint implement support, as suggested by Ban.

As to claims 2-5 and 40-43, each reference discloses a cylindrical shape and a circular in cross section shape. The exact shape of the apparatus would have been a matter of design choice, the shape of the apparatus not providing any new and unexpected result.

As to claim 9, to employ a conventional bucket shape for the paint storage apparatus would appear to have been obvious to one of ordinary skill in the art and fail to distinguish any new and unexpected result.

As to claims 45-48, the container of Ban is uniformly formed of a homogeneous material (solvent resistant plastic). The exact polymer resin (polypropylene) chosen would appear to be a matter of design choice.

As to claim 49, the top of the orifices of Ban are shown as tapered to engage the painting implements.

5. Claims 1-5, 37, 40-43, 45-49 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crilly (5,746,346) in view of Adams. Crilly discloses a paint storage apparatus comprising a container or cup divided into a plurality of compartments (10, 11 and 13; respectively) and including painting implements disclosed as supported in the compartments. Adams discloses a paint storage apparatus with a lid (70) having a plurality of orifices (16-20 or 78, 80) providing paint implement support and groove means (rim 72). To modify the paint storage apparatus of Crilly employing a lid having a plurality of orifices aligned over each compartment would have been obvious in order to allow individual paint implement support, as suggested by Ban.

As to claims 2-5 and 40-43, each reference discloses a cylindrical shape and a circular in cross section shape. The exact shape of the apparatus would have been a

matter of design choice, the shape of the apparatus not providing any new and unexpected result.

As to claim 9, to employ a conventional bucket shape for the paint storage apparatus would appear to have been obvious to one of ordinary skill in the art and fail to distinguish any new and unexpected result.

As to claims 45-48, to provide a paint container from plastic would not appear to be inventive, as official notice is taken that, evidenced by the cited prior art, plastic paint containers were well known. The exact polymer resin (polypropylene) chosen would appear to be a matter of design choice.

As to claim 49, the orifices of Adams are tapered when engaging the painting implements.

6. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Webster and Crilly in view of either one of Adams and Ban, and further in view of Jaarsma (4,277,000). Webster, Crilly, Adams and Ban have been described above. Jaarsma discloses injection molding thermoplastic to comprise a container. To employ thermoplastic to provide the molded container of either one of Webster and Crilly in the manner of Ban would have been obvious, as molding heated plastic is old and well known in the container-making field.

7. Claims 1-14, 37, 40-43, 45-50 and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams in view of one of Webster, Crilly and Morrison

(3,262,556). Adams discloses a paint storage apparatus with a lid (70) having a plurality of orifices (16-20 or 78, 88) providing paint implement support and groove means (rim 72). Webster, Crilly and Morrison each disclose a paint storage apparatus comprising a container or cup divided into a plurality of compartments (5 and 6; 10, 11 and 13; see Figure 4) and including painting implements disclosed as supported in the compartments. To modify the paint storage apparatus of Adams employing a paint storage apparatus having a plurality of compartments would have been obvious in order to allow individual discrete paint implement support, as suggested by any one of Webster, Crilly and Morrison.

As to claims 2-5, 7-11 and 40-43, each reference except Morrison discloses a cylindrical shape and a circular shape in cross section. Morrison discloses a rectangular shape. The exact shape of the apparatus would have been a matter of design choice, the shape of the apparatus not providing any new and unexpected result.

As to claim 9, to employ a conventional bucket shape for the paint storage apparatus would appear to have been obvious to one of ordinary skill in the art and fail to distinguish any new and unexpected result.

As to claims 13 and 53-54, Adams discloses a tab or indentation (98) that will inherent serve as a gripping structure to remove the lid from the container.

As to claims 14 and 50, Adams discloses caps (14 or 84).

As to claims 45-48, to provide a paint container from plastic would not appear to be inventive, as official notice is taken that, evidenced by the cited prior art, plastic paint containers were well known. Furthermore, Morrison expressly discloses plastic to



comprise the paint container. The exact polymer resin (polypropylene) chosen would appear to be a matter of design choice.

As to claim 49, the orifices of Adams are tapered when engaging the painting implements.

8. Claims 13-14 and 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combinations as applied to claims 6 and 37 above, and further in view of Hawkins (5,490,608). Hawkins discloses a hinged lid (18 or 22) provided with a tab to conventionally facilitate opening the lid. To further modify the combination of Webster or Crilly employing a lid with a tab as taught by Hawkins would have been obvious in order to seal the paint within the compartments and facilitate opening of the lid.

9. Applicant's arguments filed October 24, 2005 have been fully considered but they are not persuasive. To provide a compartmented paint container with a lid having individual support means for brushes for each compartment is maintained to have been obvious in view of the prior art taken as a whole.


10. Claims 16-36 are allowed.

11. Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman  
Primary Examiner  
Art Unit 3728

BPG